

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	
FM Broadcast Stations.)	
(Opelika and Waverly, Alabama) ¹)	MB Docket No. 05-79
)	RM-10983
Reclassification of License of)	RM-11247
Station WSTR(FM), Smyrna, Georgia))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: January 10, 2007

Released: January 12, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making* (“Notice”)² issued at the request of Opelika Broadcasting Company (“Petitioner”), proposing the allotment of Channel 232A at Opelika, Alabama, as the community’s second local FM transmission service. To accommodate the allotment, Petitioner also proposed (a) reclassification of Station WDJC-FM in Birmingham, Alabama, from 229C to 229C0;³ and (b) the reclassification of Station WSTR(FM) at Smyrna, Georgia, from Channel 231C to Channel 231C0 (RM-10983).⁴ Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted. Comments and a counterproposal were filed by Waverly Radio Broadcasters (“Waverly Radio”) proposing the allotment of Channel 232A at Waverly, Alabama, as the community’s first local aural transmission service (RM-11247).⁵ Petitioner and Waverly Radio filed reply comments.

¹ Waverly, Alabama, has been added to the caption.

² Opelika, Alabama, Notice of Proposed Rule Making, 20 FCC Rcd 4365 (MB 2005).

³ Petitioner also requested the reclassification of Station WDJC-FM at Birmingham, Alabama, from Channel 229C to Channel 229C0. However, an engineering analysis has determined that the reclassification of Station WDJC-FM is not necessary to accommodate the Opelika allotment. We note that the reclassification of Station WSTR(FM) proposed in the *Notice* is also required to accommodate the Waverly proposal.

⁴ Station WSTR(FM) operates on Channel 231C with an effective radiated power of 100 kilowatts at 311 meters height above average terrain (HAAT), which is below the minimum Class C antenna height of 451 meters HAAT. Therefore Station WSTR(FM) is subject to reclassification as a Class C0 facility. *See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, 15 FCC Rcd 21,649 (2000). Pursuant to the requirements set forth in Note 4 of Section 73.3573 of the rules, we issued an *Order to Show Cause* to Jefferson-Pilot Communications Company of Georgia, licensee of Station WSTR(FM), affording it 30 days to express in writing an intention to seek authority to upgrade its technical facilities to preserve Class C status, or otherwise challenge the proposed action. *See In Re Reclassification of License of Station WSTR(FM) Smyrna, Georgia*, 19 FCC Rcd 12799 (MB 2004). No response was received, and therefore, in accordance with the Commission’s reclassification procedures noted above, the license for Station WSTR(FM) has been reclassified to specify operation on Channel 231C0 instead of Channel 231C at Smyrna, Georgia.

⁵ The counterproposal was placed on *Public Notice* on May 20, 2005, Report No. 2709, RM-11247.

2. **Background.** The *Notice* proposed the allotment of Channel 232A at Opelika, Alabama, as the community's second local FM transmission service. To accommodate the proposed Opelika allotment, Petitioner requested the reclassification of the license for Station WSTR(FM), Smyrna, Georgia, to specify operation on Channel 231C0 in lieu of Channel 231C. Petitioner certified, as required, that no other Class A channels are available for allotment at Opelika.⁶ We issued an *Order to Show Cause* to Jefferson-Pilot Communications Company of Georgia ("Jefferson-Pilot") to seek authority to upgrade its technical facilities to preserve Class C status, or otherwise challenge the proposed action.⁷ No response was received from Jefferson-Pilot.

3. In support of its counterproposal, Waverly Radio states that Waverly has a 2000 U.S. Census population of 184 persons, while 1,247 persons reside within Waverly County. Waverly is a growing community with a 21 percent increase in population between the 1990 Census and the 2000 Census, and stands as the gateway to Chambers and Tallapoosa Counties. Waverly has its own post office and zip code (36879). It has a mayor and city council form of government. A number of businesses are located in Waverly, including Waverly Trading Company, Waverly Feed, Down to Earth Landscaping, Tri-County Termite Co., Tiger Corner Boxcar, the Katich Lodge, Country Kitchen, and Peyton Place restaurant. Waverly is also home to several churches, including Waverly Baptist Church, Mount Traveler Missionary Baptist Church and Peace and Goodwill Baptist Church. Waverly Radio asserts in its comments and reiterates in its reply comments, that the allotment of Channel 232A at Waverly in lieu of Opelika, Alabama, triggers priority (3) of the FM allotment priorities, whereas the allotment of Channel 232A at Opelika would trigger priority (4).⁸ Waverly Radio affirms its intention to apply for channel, if allotted to Waverly.

4. **Discussion.** Conflicting proposals are comparatively considered under the Commission's guidelines set forth in *Revision of FM Assignment Policies and Procedures*, *supra*. A staff search has revealed that there are no alternate class A channels available at Opelika or Waverly, Alabama. Therefore, based on the foregoing, we believe that the public interest would be served by allotting Channel 232A to Waverly, Alabama, as the community's first local aural transmission service. The allotment of Channel 232A at Waverly satisfies priority (3). By way of contrast, the allotment of Channel 232A at Opelika would provide the community with its fourth local aural transmission service, satisfying priority (4).⁹ Therefore, in accordance with the Commission's reclassification procedures noted above, we have reclassified the license of Station WSTR(FM) to specify operation on Channel 231C0 in lieu of Channel 231C at Smyrna, Georgia, to accommodate the allotment.

5. An engineering analysis has determined that Channel 232A can be allotted to Waverly in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.7 kilometers (5.4 miles) east of the community. The reference coordinates for Channel 232A at Waverly are 32-42-28 North Latitude and 85-29-27 West Longitude.

6. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office Pursuant to the Congressional Review Act, *see* 5 U.S.C. §801(a)(1)(A).

⁶ See 47 C.F.R. §§ 73.3573, n. 4 and 1.420(g), n.2. See also *Second Report and Order*, 15 FCC Rcd at 21,662, ¶ 26.

⁷ See *In Re Reclassification of License of Station WSTR(FM), Smyrna, Georgia*, *supra*.

⁸ *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91-92 (1982). The FM allotment priorities are the following: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Equal weight is given to priorities (2) and (3).

⁹ Stations WTLM(AM), WANI(AM) and WMXA(FM) are licensed to Opelika.

7. Accordingly, pursuant to the authority contained in 47 U.S.C. §§ 4(i), 5(c)(1), 303(g), and (r), and 307(b), and 47 C.F.R. §§ 0.61, 0.204(b) and 0.283, IT IS ORDERED That effective February 26, 2007, the FM Table of Allotments, 47 C.F.R. § 73.202(b) IS AMENDED, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Waverly, Alabama	232A
Smyrna, Georgia	231C0

8. A window period for filing applications for Channel 232A at Waverly, Alabama, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

9. IT IS FURTHER ORDERED, That the petition for rule making filed by Opelika Broadcasting Company (RM-10983), IS DENIED.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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